STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 122609-001**

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 4th day of January 2012
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 29, 2011, XXXXX, authorized representative of XXXXX (Petitioner), filed a request with the Commissioner of Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. After a preliminary review of the material submitted, the request was accepted on August 17, 2011.

The Petitioner has health care coverage through a group underwritten by Blue Cross and Blue Shield of Michigan (BCBSM). His benefits are contained in the *Community Blue Group Benefits Certificate* (the certificate).

Because medical issues are involved, the case was assigned to an independent review organization which provided its analysis and recommendations on September 1, 2011.

II. FACTUAL BACKGROUND

The Petitioner has a history of cardiac problems. In February 2011 he underwent an atrial fibrillation ablation procedure. His doctor prescribed mobile cardiac outpatient telemetry (MCOT) services from March 12, 2011 to April 1, 2011, to monitor his cardiovascular functions.[1]

MCOT includes two elements: a device worn by a patient which transmits signals to a

1. This is the second appeal brought by the Petitioner regarding MCOT services. In PRIRA case 121671, the Petitioner appealed a claim denial for MCOT services for the period December 6, 2010 through January 1, 2011, a period which preceded Petitioner's ablation procedure.

monitoring station where the cardiovascular functions are read and evaluated. The device and monitoring services are both provided by an XXXXX company, XXXXX, Inc. The charge for the MCOT services is $4,500.00.

BCBSM denied coverage, stating the MCOT was investigational. The Petitioner appealed the denial through BCBSM's internal grievance process. After a managerial-level conference on June 9, 2011, BCBSM did not change its decision and issued a final adverse determination dated June 27, 2011.

III. ISSUE

Did BCBSM properly deny coverage for the Petitioner's March 12 through April 1, 2011, MCOT?

IV. ANALYSIS

The Petitioner's authorized representative argues that the MCOT device is not experimental or investigational. In the request for external review, the representative wrote:

> . . . Contrary to the finding in the Plan Denial Letter, and the denial of the first appeal the Services are well-established as clinically effective and are a covered Plan benefit that were medically necessary and appropriate for this Patient. This conclusion is supported by the clinical determinations of the Ordering Physician, the standards of care in the medical community, studies in peer-reviewed and other medical literature, the terms of the Patient's Plan coverage and applicable law.
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> . . . This technology was approved by the FDA in November 1998 and is covered by the Level 1CPT codes 93229 for the technical component and 93228 for the professional component. Mobile cardiovascular telemetry services for the indication involved in this case have now been used effectively by the medical community in the United States for over a decade, and the health plans that cover this clinically valuable service for this indication include, among others, Medicare . . . Tricare, Highmark BC/BS, Independence BC/BS, Wellmark BCBS, Aetna, Cigna, and Humana.

BCBSM's Argument

In its final adverse determination, BCBSM stated that coverage would not be provided because the MCOT service is investigational. BCBSM wrote:

> An investigational status means that the safety and effectiveness of a particular technology has not been definitively determined. An established technology means that the safety and effectiveness have been definitively determined.

> Investigational medical policies are reviewed regularly to guarantee that the investigational status continues to be supported by the evidence.
>
> As explained in the *Community Blue Group Benefits Certificate, Section 6: General Conditions of Your Contract,* we do not pay for experimental treatment (including experimental devices).
>
> To clarify, our medical consultants reviewed the documentation sent by Mr. Ehrlichman and determined that there is no convincing long term advantageous outcome over the use of conventional monitoring. Therefore, payment cannot be approved.

Commissioner's Review

The question of whether the Petitioner's MCOT was experimental for treatment of his condition was presented to an independent medical review organization (IRO) for analysis, as required by Section 11(6) of the Patient's Right to Independent Review Act, MCL 550.1911(6). The IRO reviewer is a physician certified by the American Board of Internal Medicine with a subspecialty in cardiovascular disease, is published in peer reviewed medical literature, and is in active practice. The reviewer's report included the following analysis:

> **Clinical Rationale for the Decision:**
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> This reviewer does not believe that a second MCOT should be approved. With the first MCOT, the patient was symptomatic and it was important to establish that atrial fibrillation was the cause of the symptoms. But the second MCOT (after ablation), the reviewer does not see any documentation of symptoms. Even if it is assumed that MCOT is more efficacious in picking up atrial fibrillation, it is unclear as to how this would affect this enrollee's therapy.
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> * * *
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> In reviewing the literature, it is unclear to the reviewer what additional information MCOT provided in this case that a looping auto-trigger event monitor would not. The only major difference between the two technologies appears to be real-time monitoring by MCOT. However, this additional service would not impact outcomes in this particular enrollee's case.
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> **Recommendation:**
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> It is the recommendation of this reviewer that the denial of coverage issued by Blue Cross Blue Shield of Michigan for the mobile cardiac outpatient telemetry (MCOT) service provided during the period March 12, 2011 through April 1, 2011 be upheld.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO's recommendation is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

V. ORDER

Respondent Blue Cross Blue Shield of Michigan's June 27, 2011, final adverse determination is upheld. BCBSM is not required to cover the Petitioner's March 12, 2011 through April 1, 2011, mobile cardiac outpatient telemetry (MCOT) monitoring.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton
Commissioner